MC0350

Agreement

for the

Appointment of Clerks of Works for construction projects in the National Health Service (1996 edition)

NHS Estates
An Executive Agency of the Department of Health

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for the

Appointment of Clerks of Works for construction projects in the National Health Service (1996 edition)

London: The Stationery Office

NHS Estates
An Executive Agency of the Department of Health

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This VOLUME (Scheme Particulars, Conditions of Appointment, Provisions for Fees and Expenses, Definitions and Memorandum of Agreement) forms the AGREEMENT.

Reference should be made to the following documents in respect of procedures for the selection and appointment of clerks of works:

Contracts and commissions for the NHS estate (CONCODE):

a. Policy;

b. Guide to procedures for commissioning building and engineering consultants.

Agreement:

Agreement for the appointment of

_____

Address: _____

_____

_____

in connection with the construction of

_____

at _____

for _____

Scheme _____

Scheme No _____

Date _____

About this publication

This agreement has been prepared by NHS Estates for use in connection with Commissions for the national health Service. It relates specifically to NHS procedures and documentation and is not suitable, without review and modification, for use in connection with commissions from other clients

It has been produced following consultation with:

- the Institute of Clerks of Works of Great Britain Incorporated.

It is compatible with:

- the Agreement for the appointment of project managers for commissions for construction projects in the National Health Service (1995 Edition);
- the Agreement for the appointment of architects, surveyors and engineers for commissions in the National Health Service (1995 Edition);
- the Capital Investment Manual.

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It is compatible with:

- the Agreement for the appointment of person(s) managers for commissions for a project in the National Health Service (1990 edition);
- the Agreement for the appointment of architects, surveyors and engineers for commissions in the National Health Service (1990 edition);
- the Guide (revised) Manual

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1.0 Scheme particulars

This part describes the scheme in relation to site, size, cost, target dates, participants, contract strategy, documentation available from the client and client's procedures.

Clauses that cannot be completed should be deleted by the client.

Scope of appointment/scheme

1.1 Location:

_____

_____

_____

1.2 General description (including site area, approximate gross floor area, extent of alterations/refurbishment/new build):

_____

_____

_____

_____

_____

_____

_____

1.3 Phasing of the works

_____

_____

_____

Estimated cost

1.4 The cost of the works (building and engineering) at stage _____ (see clause 3.1) is estimated to be:

New build £ _____ (_____ index
(insert name of index)

_____ level)

Alterations and extensions £ _____ (_____ index
(insert name of index)

_____ level)

Target dates

1.5 (Client to insert work stages and dates)

Stage	Start	Finish

Project director

1.6 (Identify individual and position)

_____

Lead consultant

1.7 (Name of firm, professional discipline or individual if known)

_____

_____

Design team

1.8 It is the intention to appoint the following consultants (state "yes" or "no" and name the firm if known) (client to identify discipline of lead consultant):

Planning supervisor

_____

Principal contractor

_____

Architect/building surveyor

_____

Quantity surveyor

_____

Structural engineer

_____

Services engineer

_____

Others (please list)

_____

Contract strategy

1.9 The contract strategy will be:

_____

_____

_____

_____

1.10 The contract administrator within the terms of the building contract will be (insert discipline):

_____

_____

_____

Details of documentation

1.11 The client requires _____ (insert number) copies of reports, budgets, programmes, drawings, maps, photographs and other records produced by the clerk of works. (For payment see clause 3.8)

The main contract/method of measurement

1.12 Form of contract _____

1.13 Edition of the standard method of measurement _____

1.14 Firm price or fluctuating _____

1.15 Fluctuations method _____

1.16 Construction period _____

1.17 Defects liability period _____

Client's procedures/requirements

1.18 Capital Investment Manual

1.19 Specific NHS body/scheme requirements *(specify)*:

_____

_____

_____

_____

Meetings

1.20 The clerk of works shall include in the lump sum fees for attending the following meetings required by the client/lead consultant:

Workstage*	Meeting*	Number or Frequency	Location*

* *Client/Lead Consultant to insert details*

2.0 Conditions of appointment

This part describes the conditions which normally apply to a consultant's appointment. If different or additional conditions apply, they are set out in the memorandum of agreement, Articles 6.10 and 6.11.

Throughout this agreement words in the masculine shall include the feminine and neuter.

Generally

Duration of commission

2.1 The appointment of the clerk of works will commence from the date of the memorandum of agreement and the commission, unless suspended or terminated, shall be deemed to be completed on the conclusion of the duties as set out in schedule 1 of the memorandum of agreement.

Objectives and obligations of the clerk of works

Scope of duties

2.2 The duties to be performed by the clerk of works are those recorded in schedule 1 of the memorandum of agreement.

Attendance at meetings

2.3 In performing the duties recorded in schedule 1 of the memorandum of agreement the clerk of works shall arrange and attend all meetings necessary to their proper execution. Meetings required by the client/lead consultant are recorded in clause 1.20 of the scheme particulars.

Additional duties

2.4 The clerk of works shall not perform any duties other than those recorded in schedule 1 of the memorandum of agreement unless the client through the lead consultant instructs the clerk of works otherwise or the clerk of works has informed the client through the lead consultant of the need for the additional duties, the reasons, the effect on the cost of the works and any additional fees required, and has obtained the approval of the client in writing. Any such approval shall indicate the maximum budget for fees and works where appropriate which should not be exceeded without further approval having been obtained. These shall be conditions precedent to any payment being due from the client.

Information from the clerk of works

2.5 The clerk of works shall provide information to the client through the lead consultant in accordance with the programme defined in clause 2.11.

Duty of care

2.6 The clerk of works is to exercise reasonable skill, care and diligence in the discharge of the duties agreed to be performed by him in relation to this commission. Submission of documentation produced by the clerk of works for comment by the client shall not relieve the consultant of this responsibility. If in the performance of his/her duties the clerk of works has a discretion exercisable as between the client and any other body the clerk of works shall exercise his/her discretion fairly.

Co-ordination of clerk of works services

2.7 Co-ordination and integration of the activities of clerk of works however employed shall be the responsibility of the lead consultant identified in article 6.3 of the memorandum of agreement.

Collaboration between the clerk of works and design team

2.8 The clerk of works shall take account of the role of the lead consultant and collaborate with the lead consultant and other members of the design team and with other professional consultants employed by the client and in the client's employment.

Authority of clerk of works

2.9 The clerk of works shall act on behalf of the client in matters set out or implied in this agreement and in accordance with the terms of the building contract. The client shall ensure that the clerk of works has the necessary power and authority to perform his/her duties. Where the services covered in this agreement relate to a building or engineering contract for which the architect/engineer is not the client then the client shall instruct the clerk of works to liaise with the architect/engineer in all areas where the terms of this

agreement require the clerk of works to liaise with the client.

Progression between work stages

2.10 The clerk of works shall obtain approval in writing from the client before proceeding between the work stages described in schedule 1 of the memorandum of agreement. Only those stages authorised shall be eligible for payment.

Programme of Inspection/Monitoring of works in progress

2.11 The clerk of works shall prepare and submit a programme using the target dates in clause 1.5 of the scheme particulars to the lead consultant within 14 days of the execution of this agreement. The lead consultant shall then co-ordinate all submitted programmes and submit a programme for the scheme to the client who shall be entitled to reject the programme if it either fails to incorporate the information in this agreement and/or the clerk of works brief or meet the client's objectives as stated in the full brief. The clerk of works shall submit a revised programme to the client as soon as he is aware of any changes to the progress of project.

Full inspection*

2.12 The clerk of works shall inspect the progress and quality of the works throughout all stages of construction (except where the clerk of works has been instructed not to inspect in articles 6.10 or 6.11 of the memorandum of agreement) for compliance with the contract documents.

Intermittent inspection*

2.13 Where the extent of the works is such that the client does not require a resident clerk of works on site, an overall requirement should be agreed within which visits of a frequency and duration appropriate to the stage of construction to inspect the progress and quality of the work will be made at the clerk of works' discretion, to verify, as far as is reasonably possible, that the works are in accordance with the contract documents.

* (The clerk of works must be provided with a brief by the client which will state whether a full or intermittent inspection service is required).

Obligations of the client

Duties of the client

2.14 The client shall nominate a project director who shall be responsible for the information and actions listed in schedule 2 of the memorandum of agreement, 'Agreement for the appointment of project managers for construction projects in the National Health Service', to enable the proper performance of the clerk of works' duties as stated in schedule 1 of the memorandum of agreement.

Construction (Design and Management) Regulations 1994

2.15 The client shall appoint a planning supervisor and a principal contractor in accordance with the provisions of the Construction (Design and Management) Regulations.

Information from the client

2.16 The client shall nominate a project manager who shall be responsible for providing information and making such decisions as are necessary for the proper performance of the agreed duties as recorded in schedule 1 of the memorandum of agreement, all in accordance with the programme.

Provision of accommodation and facilities

2.17 The client shall be responsible for the provision of accommodation and facilities for the clerk of works in accordance with this agreement.

Ownership of documents and copyright

Copyright entitlement

2.18 Unless otherwise agreed, and subject to clauses 2.19 and 2.20, the copyright and all other intellectual property rights in all documents provided by the clerk of works in connection with the works shall be vested in the clerk of works.

Documentation provided by the client

2.19 Where standard documentation, including drawings, is provided by the client, copyright of such documentation and drawings shall remain vested in the client.

Client's licence and restrictions

2.20 The client shall have a licence to copy and use any documents provided by the clerk of works for information to facilitate the future extension, alteration, maintenance or repair of the works. The client, upon payment or tender of any fees due, shall have a licence to copy any documents for any purpose agreed between the client and clerk of works related to the extension, alteration, maintenance or repair of the works. The clerk of works shall not be liable for any such use by the client or its appointee of any drawings or other documents for any purpose other than that for which the same were prepared and provided by the clerk of works. Save as aforesaid the client shall not make copies of any documents nor shall he use the same in connection with the making or improvement of any works other than those comprising the Works without the prior approval of the clerk of works which approval shall not be unreasonably withheld, and upon such terms as may be agreed between the client and clerk of works.

Clerk of works' rights of publication

2.21 The clerk of works shall not communicate with the media or any outside body or publish or display alone or in conjunction with any other person, any articles, photographs or other illustrations relating to the Works without prior written consent from the client, which consent shall not be unreasonably withheld.

Professional indemnity insurance

Extent of insurance cover

2.22 The clerk of works shall take out and maintain throughout the period from the date of commencement of his services under this commission professional indemnity insurance in respect of the clerk of works' business generally. The professional indemnity insurance shall be maintained until the expiration of six/twelve years*, provided that it can be obtained at reasonable market rates, from the date of completion of his commission. The level of indemnity shall be as shown in the certificate set out in part 4 of this agreement.

Professional indemnity insurance certificate

2.23 The clerk of works shall, whenever required by the client, produce a certificate, in the form set out in part 4 of this agreement, signed by or on behalf of the insurers.

* Client to delete alternative not required.

Certification

Certification generally

2.24 The clerk of works shall provide the client with completed certificates when required to do so.

Specimen certificates

2.25 The clerk of works shall ensure that the certificates included in part 4 of this agreement are provided when required in the plan of work in schedule 1 of the memorandum of agreement.

Assignment and sub-contracting

Assignment by the clerk of works

2.26 The clerk of works shall not assign the whole or part of the benefits or in any way transfer the obligations of this agreement or any part thereof without the consent of the client.

Assignment by the client

2.27 The client reserves the right to assign the whole or any part of the benefit or transfer obligations of the agreement or any part thereof to another NHS body without the consent of the clerk of works.

Sub-contracting

2.28 The clerk of works shall not sub-contract any of the duties under this agreement without the consent of the client.

Variation, extension, suspension or termination

Variation or extension by the client

2.29 The client may vary or extend in time the whole or part of the agreed duties by giving reasonable notice in writing to the clerk of works. In such notice the project director shall specify the duties affected.

Suspension or termination by the client

2.30 The client may suspend or terminate the whole or part of the agreed duties by giving reasonable notice in writing to the clerk of works. In such notice the client

shall specify the duties affected and the reason for suspension or termination.

2.31 Suspension or termination by the client shall be permitted in the following circumstances:

a. the client has decided to suspend or terminate the scheme;

b. non-performance by the clerk of works;

c. breach of the provisions of this agreement by the clerk of works;

d. the clerk of works becoming bankrupt or insolvent.

Resumption of duties

2.32 If the clerk of works has not been given instructions to resume any work suspended under clauses 2.30 and 2.31a within six months from the date of suspension the clerk of works may make a written request for such instructions, which must be given in writing. If these have not been received within 30 days of the date of such request the clerk of works shall have the right to treat the appointment as terminated.

Suspension or termination by the clerk of works

2.33 The clerk of works may suspend or terminate the performance of the agreed duties on the expiry of reasonable notice given in writing to the client. In such notice the clerk of works shall specify the duties affected and the reason for suspension or termination.

2.34 Suspension or termination by the clerk of works shall be permitted in the following circumstances:

a. the client has not provided an instruction to resume work under clause 2.30;

b. breach of the provisions of this agreement by the client.

Death or incapacity of the clerk of works' key personnel

2.35 Should the clerk of works through death or incapacity be unable to perform the agreed duties, this agreement shall thereby be terminated.

Delivery of documents

2.36 On termination of the agreement and on satisfactory delivery of all documentation prepared by the clerk of works to the client, the clerk of works shall be paid all due fees and expenses.

Settlement of disputes

Adjudication

2.37 The clerk of works shall refer any difference or dispute arising out of this agreement to the adjudicator named in article 6.9 of the memorandum of agreement within 28 days of the occurrence of the difference or dispute.

2.38 The clerk of works shall send a notice to the adjudicator and the client. The notice shall specify the matter in dispute and set out the principal facts and arguments relating to it. Copies of all relevant documentation shall be attached to the notice.

2.39 The client shall send representations to the adjudicator within 14 days of receipt of the copy of the notice required under clause 2.38.

2.40 The adjudicator shall notify his decision to the client and the clerk of works within 28 days from the date of receipt of the clerk of works' notice.

2.41 The decision of the adjudicator on any matter will be binding until completion, suspension or determination of the commission.

2.42 The adjudicator shall not be liable to the parties for breach of duty.

2.43 Payment of the adjudicator's fees shall be shared equally between the parties.

2.44 During the process of adjudication the performance of the agreed duties shall continue as if there were no difference or dispute.

2.45 If the adjudicator named in article 6.9 of the memorandum of agreement resigns or is unable to act, the parties shall choose a new adjudicator jointly.

2.46 If the parties have not chosen a new adjudicator jointly within 28 days of the adjudicator resigning or becoming unable to act, then the President of the Chartered Institute of Arbitrators shall be requested to nominate a new adjudicator.

Arbitration

2.47 If the following arises:

a. the adjudicator fails to provide his decision within the period specified in clause 2.40; **or**

b. the client and/or the clerk of works disagree with the decision of the adjudicator and the duties under the commission have been completed;

then a difference or dispute arising out of the agreement shall be referred to arbitration by a person to be agreed between the parties or, failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an arbitrator, a person to be nominated at the request of either party by the President of the Chartered Institute of Arbitrators. The award of such arbitrator shall be final and binding upon the parties.

By agreement

2.48 Nothing herein shall prevent the parties agreeing to settle any difference or dispute arising out of the agreement without recourse to arbitration.

Statutory legislation

Race Relations Act

2.49 The clerk of works shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or any statutory modification or re-enactment thereof relating to discrimination in employment.

2.50 The clerk of works shall take all reasonable steps to ensure observance of the provisions of the preceding clause by all servants, employees, agents or sub-contractors of the clerk of works.

Governing laws

2.51 The application of these conditions shall be governed by the laws of England and Wales.

3.0 Provision for fees and expenses

This part defines the cost of the works in relation to the clerk of works and describes the methods of payment for the clerk of works' services and expenses.

Cost of the works

3.1 In this agreement the cost of the works for the purposes of the calculation of fees by the clerk of works for the insertion of lump sum fees (article 6.5 of the memorandum of agreement) shall be the estimated cost of the works identified in clause 1.4.

a. The lump sum fees shall, unless otherwise agreed between the consultant and the client and recorded in the memorandum of agreement, include for carrying out the duties set out in schedule 1 of the memorandum of agreement for all Group 1 and Group 2 (new and secondhand) equipment planned into the project, costed and incorporated in the production information including where such equipment is also procured or provided by the client, installed, tested, set to work and commissioned within the main contract sum.

b. The lump sum fees shall not include for carrying out any of the duties set out in schedule 1 of the memorandum of agreement in respect of the following:

   (i) group 3 or 4 equipment (the duties set out in schedule 1 of the memorandum of agreement may be amended by the client to include these or an instruction in respect of their inclusion may be issued under the provisions of clause 2.4 after the commencement of the commission);

   (ii) administration expenses incurred by the client.

Payment for duties

Methods of payment

3.2 The lump sum fees, except for those on a time-charge basis, shall be deemed to include the provision of everything necessary to perform the duties listed in schedule 1 of the memorandum of agreement. The sum payable by the client to the clerk of works shall be on a lump sum basis as identified in article 6.5 of the memorandum of agreement.

Payment on a lump sum basis

3.3 The lump sum fees shall be calculated for each work stage in accordance with the apportionment recorded in article 6.5 of the memorandum of agreement. The lump sum fees will be fixed until the completion of the duties specified in schedule 1 of the memorandum of agreement.

Fees when works are phased

3.4 Where it is stated in the scheme particulars that the works are to be constructed in more than one phase, the lump sum recorded against each work stage in article 6.5 of the memorandum of agreement shall be applied to the total cost of the works (as defined in clause 1.4) in respect of each stage. The resultant fee per stage shall be allocated between the said phases proportionate to the cost of each phase at each stage as defined in clause 1.4.

Payment on a time-charge basis for additional duties

3.5 Where payment is on a time-charge basis for additional duties the scale of charges shall be as set out below.

Director/senior clerk of works – hourly rates

a. Where a director/senior clerk of works is specifically nominated by the client to perform the duties then the director's/senior clerk of works' time shall be reimbursed at the rate per hour quoted in articles 6.6i(a) and 6.6ii(a) of the memorandum of agreement or at such other rate as may be agreed between the client and the clerk of the works. The rate per hour quoted shall apply until the completion of the duties set out in schedule 1 of the memorandum of agreement. Only expenses for travelling and subsistence shall be chargeable in accordance with clause 3.10 in addition to the hourly rates quoted.

b. Directors/senior clerks of works doing work which they consider would normally be done by a member of staff shall be reimbursed at the rate per hour quoted in articles 6.6i(b) and 6.6ii(b) of the memorandum of agreement or such other rate as may be agreed between the client and the clerk of works. For the purposes of this clause, the rate for a director's/senior clerk of works' time shall be calculated at the rate applicable to a senior professional member of staff in the firm.

Clerk of works – hourly rates

c. Clerk of works' staff time shall be reimbursed at the rate per hour quoted by the clerk of works in articles 6.6i(b) and 6.6ii(b) of the memorandum of agreement in the categories stated or such other rate as may be agreed between the client and the clerk of works. The rate per hour quoted shall apply until the completion of the duties set out in schedule 1 of the memorandum of agreement. The rate per hour shall include salary, payroll and other costs of employment. Only expenses for travelling and subsistence shall be chargeable in accordance with clause 3.10 in addition to the hourly rates quoted.

Travelling time

d. Time spent by directors, senior clerks of works and clerks of works on travelling in connection with the duties set out in schedule 1 of the memorandum of agreement shall be chargeable on the above basis, excluding travelling time between home and the normal work place.

Supervisory duties

e. The supervisory duties of a director or senior clerk of works shall be deemed to be included in the rate per hour quoted by the clerk of works in articles 6.6i(b) and 6.ii(b) of the memorandum of agreement.

Secretarial and administrative staff

3.6 Time charge rates shall include the cost of providing secretarial staff or staff engaged on general accountancy or administration duties.

Clerk of works' records

3.7 The clerk of works shall maintain records of time spent on services performed on a time charge basis. The clerk of works shall make such records available to the client upon reasonable request.

Travelling, subsistence and other expenses

3.8 Travelling, subsistence and other expenses shall be included in the lump sum fees and shall be deemed to include the cost of:

a. telex, facsimile and telephone calls;

b. postage and similar delivery charges;

c. travelling, hotel expenses and other similar expenses;

d. all printing, reproduction and purchase of all documentation, drawings, maps, photographs, manuals needed by the clerk of works and other members of the design team insofar as they are produced by the clerk of works for the proper performance of the duties relating to this particular commission including the numbers stated in clause 1.12 of the scheme particulars.

Additional expenses

3.9 The clerk of works shall be reimbursed for all expenses properly incurred in connection with any disbursements required by the client.

Travelling, subsistence and other expenses – time based charges or where not included in lump sum fee bid

3.10 For time based charges and where the items at clause 3.8 are not included in the lump sum fee recorded in article 6.5 of the memorandum of agreement then the clerk of works shall be reimbursed in respect of travelling, subsistence and other expenses properly made at net cost. Where these services are carried out within the clerk of works office, they shall be reimbursed at rates to be agreed between the clerk of works and the client, taking into account commercial rates for similar services available on the open market. Travelling and subsistence shall be reimbursed at actual costs, up to the maximum rate applicable to staff in the National Health Service of equivalent status, and subject to the same conditions.

Site accommodation

Payment for site accommodation and equipment

3.11 The client shall be responsible for the provision of site accommodation for the clerk of works provided that the client agrees that the clerk of works' staff are necessarily employed on site or on the client's premises for site inspection purposes. All accommodation and equipment will be as detailed in the contract documents for the appointment of the contractor.

Changes

Post-contract changes (work stage 4 onwards)

3.12 Where the works are varied by the client, post-contract fees and expenses for the clerk of works' services in connection with such variations shall be negotiated between the client and the clerk of works' to produce an agreed lump sum, or in accordance with the scale of charges as described in clause 3.5.

Extra work and expense

3.13 Where the clerk of works is involved in extra work and expense for reasons beyond the clerk of works' control and other than is provided for under clause 3.15, additional fees shall be due, and shall be an agreed lump sum or in accordance with the scale of charges as described in clause 3.5.

Payment for additional duties

Fees for additional duties required by the client

3.14 For additional duties not normally necessary such as those in connection with contractors' claims and all similar duties where the client specifically instructs the clerk of works in writing, the charges shall either be an agreed lump sum or in accordance with the scale of charges as described in clause 3.5.

Statutory fees

Payment of statutory fees

3.15 The client shall pay all fees in respect of applications under planning and other statutory requirements.

Suspension, resumption and termination

Fees on suspension or termination

3.16 On suspension or termination of the clerk of works' appointment under clauses 2.31, 2.33 or 2.34 the clerk of works shall be entitled to fees due for all work completed at the date of suspension or termination.

Reimbursement during suspension

3.17 During any period of suspension the clerk of works shall be reimbursed by the client for costs necessarily incurred under the appointment up to the date of resumption or termination.

Fees on resumption

3.18 On resumption within six months of suspension, previous payments shall be regarded as payments on account towards the total fee. The fee may be adjusted as a result of negotiation between the project director and the clerk of works to allow for any cost increases or decreases that have occurred during the period of suspension. Any adjustment shall be an agreed lump sum together with an adjustment to the scale of charges as described in clause 3.8.

Reimbursement on termination by the client

3.19 Where the clerk of works' appointment is terminated by the client under clause 2.31, the consultant shall be reimbursed by the client for costs, excluding loss of profit, necessarily incurred in connection with work up to the date of termination or arising as a result of the termination.

Reimbursement on termination by the clerk of works

3.20 Where the clerk of works terminates the appointment under clause 2.34, the client shall be responsible for costs necessarily incurred by the clerk of works arising as a result of the termination.

Payment of accounts

Submission of accounts and documentary evidence

3.21 Accounts for payment of fees and/or expenses and disbursements shall be submitted to the client at the intervals stated in article 6.8 of the memorandum of agreement. Interim payments of fees shall be proportionate to the extent to which the commissioned duties have been discharged. Accounts for time-charge based duties and/or travelling, subsistence and other expenses shall be accompanied by documentary evidence of the time and expenses incurred. Such time charges and/or travelling, subsistence and other expenses shall be in respect of the whole of the period since the preceding interim payment.

Payment of accounts

3.22 All sums due from the client to the clerk of works under the agreement shall be paid within 30 days of submission by the clerk of works of his account to the client.

3.23 Where the clerk of works sub-contracts any of the duties forming part of this agreement there shall be included in the conditions of appointment of the sub-contractor a term which requires that payment be made to the sub-contractor within a period not exceeding 30 days from receipt of a fee account by the clerk of works from the sub-contractor.

Value Added Tax – in relation to fees and expenses

3.24 All fees and expenses set out in this agreement are exclusive of Value Added Tax, the amount of which, at the rate and in the manner prescribed by law, shall be paid by the client to the clerk of works.

4.0 Specimen certificates

This part contains specimens of the certificates referred to in the agreement that are required to be signed by the clerk of works:

- 4.1 – insurer's certificate of professional indemnity insurance
- 4.2 – construction certificate by clerk of works.

4.1 Insurer's certificate of professional indemnity insurance cover (see clause 2.23)

Name and address of clerk of works:

_____

_____

_____

_____

I/We, the insurers/brokers, hereby certify that the above named firm is currently insured for the period ending: _____

a. Where the clerk of works' annual gross fee income earned on UK schemes in the last completed financial year, as declared by the insured, exceeds £125,000, the limit of indemnity is at least twice that gross fee income with a maximum cover of up to £1,000,000 * on each and every claim or a greater amount if the client has so required or;

b. Where the clerk of works' annual gross fee income is £125,000 or less, the limit of indemnity is at least £250,000 for each and every claim.

**This figure will cover most circumstances; however, NHS bodies should carefully consider the level of protection required when making appointments for specific projects where (a) is likely to apply to the firms being considered for appointment.*

The amount of any excess carried by the insured on each and every claim is:

_____

The policy is subject to the insuring agreements, exclusions, conditions and declarations contained therein. The above is accurate at the date of signature. No obligation is imposed herein on the signatory to advise of any alterations.

Signed

_____

Name (Capitals)

_____

on behalf of
Name of insurer/broker

_____

_____

Address of insurer/broker

_____

_____

Date

_____

4.2 Construction certificate by clerk of works

NHS body _____

Scheme _____

Notwithstanding anything to the contrary contained in this certificate, this firm is obliged to exercise reasonable skill, care and diligence in the performance of the services required by that commission and this firm shall not be liable except to the extent that it has failed to exercise reasonable skill, care and diligence and this certificate shall be read and construed accordingly.

This firm has exercised reasonable skill, care and diligence in performing the services required by its commission in relation to inspection of the work to ensure that the works are constructed in accordance with the contract documents (contract conditions, specification, and/or bills of quantities) subject to any alterations or modifications made thereto by the Design Team. This will involve the firm in ensuring that the contractor has generally fulfilled his obligations with regard to the Building Regulations, Codes of Practice (including Department of Health Firecode) and British or European Standards Specification or European Technical Approvals or Common Technical Specifications, as appropriate.

Supporting documents have been obtained where in my opinion these are appropriate and necessary.

Signed

_____

Qualification

_____

Name (capitals)

_____

Name of firm

_____

Position in firm

_____

Date

_____

This certificate shall not read as implying certification of design or construction as defined in The Building Act 1984 and The Building (Approved Inspectors etc) Regulations.

5.0 Definitions

This part contains a list of terms used throughout this agreement and in understanding this agreement the following expressions shall have the meaning hereby assigned to them except where the context otherwise requires.

Adjudicator

The individual nominated in article 6.9 of the memorandum of agreement by the client to whom all disputes in connection with this agreement shall be referred until completion of the commission.

Agreement

This Agreement shall comprise the following parts:

1. Scheme particulars
2. Conditions of appointment
3. Provision for fees and expenses
4. Specimen certificates
5. Definitions
6. Memorandum of agreement

Architect

The person, partnership, company or firm appointed by the client to act as the architect for the scheme described in the memorandum of agreement.

Brief

a. *Clerk of works' brief*

A document issued to the clerk of works containing information about the scheme, the client's procedures etc to enable them to understand exactly the extent of the service they are required to provide.

b. *Full brief*

A document containing instructions to the design team at stage 2 stating the essential detailed requirements of the client that the scheme must meet, including the following:

(i) confirmation of any changes to the parameters set down in the scheme brief, especially regarding programme, planning, operational and cost criteria;

(ii) detailed design briefing (for example, based on the NHS Design Briefing System [DBS]);

(iii) any updating of the initial brief.

c. *Commissioning brief*

The operational brief concomitant to the full brief, containing the essential operational/ implementation, programming and budgeting requirements for bringing the scheme into operation.

Budget cost

An estimated cost of the whole of the anticipated capital expenditure and Value Added Tax for the project, including:

a. departmental costs;

b. on-costs;

c. works costs (total of departmental and on-costs);

d. locational adjustment;

e. fees;

f. non-works costs;

g. equipment; and

h. contingencies.

Once approved within the full business case submission the total of these costs becomes the "Approved Budget Cost". In order to estimate the total "outturn cost" for the project the NHS Executive will add an additional amount for inflation.

Building surveyor

The person, partnership, company or firm appointed by the client to act as the building surveyor for the scheme described in the memorandum of agreement.

Capital budget

The capital costs component of the budget cost.

Capital Investment Manual

The document of the same title published by the NHS Executive in the version current at the date of this agreement.

It comprises the following sections:

- Overview
- Project Organisation
- Business Case Guide
- Private Finance Guide
- Management of Construction Project
- Commissioning a Health Care Facility
- IM & T Guidance
- Post-Project Evaluation

Clerk of works

The person, partnership, company or firm appointed by the client to act as the clerk of works for the scheme described in the memorandum of agreement.

Client

The NHS body named in the memorandum of agreement.

Commissioning brief

See "Brief".

Commissioning officer

The individual responsible for the overall management, supervision and co-ordination of commissioning by the client who is accountable to NHS body management.

Commissioning team

A team comprising a core of officers responsible to the commissioning officer, and concerned with the management and supervision of commissioning for the client necessary to bring the scheme into effective and efficient operation. Representatives of those responsible for managing and running services may be co-opted into the commissioning team.

Construction (Design and Management) Regulations

These Regulations enact into UK law the requirements of the EC Temporary or Mobile Construction Sites Directive (92/57/EEC). They place responsibilities for health and safety on all those involved in the process of procuring a building (clients, designers and contractors). There are certain basic requirements, for example the appointment of a planning supervisor and principal contractor, the preparation and maintenance of a health and safety plan for the life of the building.

Consultant

A person, partnership, company or firm employed by the client in connection with the design and administration of contract(s) for construction works.

Contract administrator

The consultant with particular additional responsibilities for administering the building contract.

Contract strategy

The method by which the building project is to be achieved, determining:

- the relations between the client, the design team and the consultants' team;
- the methods of financing and management; and
- the form of construction contract.

Contractor

Any person or persons, firm or company under contract to the client to perform work and/or supply goods in connection with the scheme.

Defects liability period

The period of time stated in clause 1.17 of the scheme particulars and the conditions of contract and starting from the date of practical completion of the works, during which the contractor is liable for making good defects attributable to workmanship or materials not having been made in accordance with the contract.

Design team

A team comprising consultants or an NHS body's design staff responsible for design of the scheme, inspection of its construction, adjustment of accounts and the issue of the final certificate.

Director

Member of firm generally in overall charge of the policy and conduct of the firm's business who is able to commit the firm to undertake commissions.

Engineering services commissioning

Bringing the entire engineering service works together into full normal working condition and handing over the whole to the client as an operating entity capable of meeting the levels of load and/or performance specified.

Engineering services works

The engineering services in connection with which the client has engaged the services engineer to perform the professional duties.

Equipment

Equipment is classified into four groups:

Group 1: items usually supplied and fixed by the contractor;

Group 2: items, having a significant effect on space or structural requirements, which are supplied by the NHS body and fixed by the contractor;

Group 3: items, having a significant effect on space or structural requirements, which are supplied by the NHS body and put in position by them or their agent outside the general contract (for example includes X-ray equipment, linear accelerators and other medical equipment);

Group 4: small items, usually storage items, supplied and put in position by the NHS body.

Final account

The document to arrive at the total remuneration due to the contractor under the terms of the contract.

Health and Safety file

This is the document referred to in the Construction (Design and Management) Regulations which contains information on the design of the scheme together with information added during construction to provide "as built" records. The information contained in the file is handed to the project director and is used to assist any persons carrying out work on the scheme after its completion (eg maintenance, extensions, refurbishment, demolition).

Health and Safety plan

This is the document referred to in the Construction (Design and Management) Regulations which is prepared for a specific scheme. It sets out the health and safety policies to be adopted together with methods for monitoring Health and Safety performance, identifies the principal health and safety hazards that may be encountered during construction together with precautions where appropriate, and requires work to be carried out to recognised standards and in accordance with published guidance as specified in the plan.

Lead consultant

The consultant member of the design team appointed by the client to act as the lead consultant for the scheme described in the memorandum of agreement.

Management control plan

The overall programme and plan of work for the execution and commissioning of a scheme. The plan must take account of Capital Investment Manual activities and a scheme's requirements in terms of resources and timing. It will normally be expressed in diagrammatic form (network or bar chart) and will be updated regularly to reflect progress made.

Management staff categories

For the purpose of time charge rates, the definitions of the project management staff grades listed in articles 6.6i(b) and 6.6ii(b) of the memorandum of agreement are:

Director/senior clerk of works: a person who has held corporate membership of a professional body recognised by the NHS body (eg the Institute of Clerks of Works of Great Britain Incorporated) for a period of at least five years.

Clerk of works: a person who has held corporate membership of a professional body recognised by the NHS body (eg the Institute of Clerks of Works of Great Britain Incorporated).

Technician: a person not holding corporate membership of a professional body, with five years' or more relevant work experience.

Material(s) (in relation to copyright)

Any document, item, material or the work produced for the purpose of the scheme or in connection with the scheme by the consultant, any of its employees or any third party engaged by the consultant or working under the direction or supervision of the clerk of works.

NHS body

This includes NHS trusts, authorities, FHSAs, SHSAs and any other centrally funded bodies.

Operating manuals

Sets of documentation which shall include the operating instructions, servicing and maintenance instructions, spare parts lists and test reports dealing with the building and engineering systems provided under the commission. The manuals shall cover in an orderly fashion each item of equipment and each system in the works.

Participant

A person, partnership, company or firm involved in the scheme and making a contribution to its completion, operation or occupation.

Planning supervisor

The firm, professional discipline or individual named in clause 1.8 of the scheme particulars to perform the duties ascribed to the planning supervisor in the Construction (Design and Management) Regulations.

Post-contract changes (stage 4 onwards)

The alteration or modification of the design, quality or quantity of the work shown on the contract drawings and described by or referred to in the contract bills, priced documents or other production information for main and sub-tenders; the addition, alteration or omission of any obligations or restrictions imposed by the client in the contract bills or priced documents.

Practical completion (certificate of)

Document certifying that a scheme or specified part of the scheme has in the opinion of the contract administrator achieved practical completion of the works in accordance with the contract; the date of this certificate marks the commencement of the defects liability period (maintenance period) and of the period of final measurement for the purposes of the final account.

Principal contractor

The firm named in clause 1.8 of the scheme particulars to perform the duties ascribed to the planning supervisor in the Construction (Design and Management) Regulations. The firm will be for the maintenance, implementation and development of the health and safety plan during construction and co-ordinating the activities of all contractors and sub-contractors (including the self-employed) to ensure that they comply with the relevant health and safety legislation.

Professional advisor

An individual or firm appointed by the client to provide advice on:

a. actions, decisions and approvals from the NHS body;

b. interpretation of reports and recommendations submitted by the project manager, and advice on when and what action is needed as a result;

c. the adequacy and contents of the project execution plan; and

d. internal NHS body matters affecting the project.

Project

The complete cycle of development work envisaged for an individual hospital or NHS site. A project may include a number of building schemes.

Project director

The individual, usually an employee of the client, who represents, and has the authority of the client in respect of the specific scheme. All instructions given by the project director are deemed to be given by the client. All advice given to the project director is deemed to have

been given to the client. More detailed information is provided in the Capital Investment Manual: Project Organisation.

Project execution plan

A manual prepared by the project manager and agreed with the project sponsor, acting as a common control document for the scheme including, inter alia, the following subjects:

a. management and organisational structure;

b. identification of all participants;

c. summary of duties of all participants;

d. responsibilities of all participants;

e. delegated authority limits of all participants;

f. lines of communication;

g. administrative procedures;

h. client/project director approval/instruction procedures;

j. progress procedures;

k. reporting procedures and formats (including cost control and reporting);

m. financial procedures (including risk and sensitivity analysis, change and cost management procedures);

n. meetings structure;

p. quality assurance/control;

q. construction procedures;

r. technical and operational commissioning procedures;

s. post-project evaluation procedures.

Project information manuals

Sets of documentation which shall include all essential information about the construction of the building, together with all the necessary sources of information for its proper maintenance, for example information regarding safety and fire integrity.

Quantity surveyor

The person, partnership, company or firm appointed by the client to act as the quantity surveyor for the project/scheme described in the memorandum of agreement.

Record drawings

Drawings showing the building and services installations as erected at the date of practical completion.

Scheme

All planning, design and construction work and commissioning activity necessary to bring planned facilities into use (including essential preliminary and enabling works), referred to in the memorandum of agreement.

Services engineer

The person, partnership, company or firm appointed by the client to act as the services engineer for the scheme described in the memorandum of agreement.

Shop drawings

Drawings and documentation prepared by the contractor or sub-contractor or suppliers to supplement the production information for use in manufacturing of components or installation of on-site assemblies.

Site inspection staff (see also Clerk of works)

Staff resident on site on a full- or part-time basis to inspect the progress and quality of the work and to verify that the Works are being executed in accordance with the contract documents.

Stage payments

Payments made on completion of pre-determined stages of the work.

Structural engineer

The person, partnership, company or firm appointed by the client to act as the structural engineer for the scheme described in the memorandum of agreement.

Structural engineering works

Those works for which the structural engineer is required to prepare calculations and generally give advice and otherwise perform professional duties.

Sub-contractor

Any person, partnership, company or firm under contract to the contractor to perform work and/or supply goods and/or services in connection with the scheme.

Sub-programme

Detailed programme based on the constraints of the management control plan, relating to a particular stage or part of the scheme.

Tender documents

All the documents used to invite tenders for the execution of the works.

User panel

A group representing the end users of the scheme comprising representatives of the NHS body's finance department, medical staff and those responsible for operating the various ancillary services.

These representatives will be authorised to define their departments' needs and to review and agree how those needs will be met whilst ensuring that the scheme remains financially viable. The user panel will communicate its requirements and decisions to the project manager and planning supervisor through the project director.

Works

The construction works relative to the scheme.

6.0 Memorandum of Agreement

This part comprises the memorandum of agreement between the client and the clerk of works.

Memorandum of agreement

This agreement is made on the _____ day of _____ 19 _____ between
(insert name of client)
of

_____

(hereinafter called the 'client') of the one part
and

_____

(insert name)

of (clerk of works or firm providing clerk of works services)

_____

_____

(hereinafter called the clerk of works) of the other part

WHEREAS

the client intends to proceed with (the 'scheme')

_____

and has appointed or proposes to appoint

_____

to be their planning supervisor*

_____

to be their architect/building surveyor*

_____

to be their quantity surveyor*

_____

to be their structural engineer*

_____

to be their services engineer*

and other consultants* as necessary to complete the scheme and has requested the clerk of works to perform the duties in connection with the items stated in this memorandum.

** Client to insert names and delete as appropriate*

NOW IT IS HEREBY AGREED AS FOLLOWS:

6.1 The client agrees to engage the clerk of works and the clerk of works agrees to perform the duties subject to and in accordance with Volume 1

Parts 1–5 including any specific requirements listed at clause 1.18 of the scheme particulars.

6.2 This section of the Agreement, together with Parts 1–5 of this agreement shall together constitute the agreement between the client and the clerk of works.

6.3 The _____ * shall be the lead consultant as described in clause 1.7 and 2.7 of the agreement.

6.4 The _____ * shall be the contract administrator as described in clause 1.10 of the agreement.
** client to insert discipline*

Payment for duties

6.5 The clerk of works' duties shall be as set out in schedule 1 of the memorandum of agreement and the payment for stages _____ * duties shall be as set out below:

Workstage*	Fee†	Basis of fee‡
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

** Client to state workstage*
† Clerk of works to complete
‡ Client to state basis of fee

Time-charge rates for additional duties

6.6 For those duties where fees are payable on a time-charge basis, the rates referred to in clause 3.5 of the agreement shall be:

(i) Building clerks of works

a. Director/senior clerk of works (clause 3.5a): £ _____ per hour

b. Clerk of works (clause 3.5c):

Clerk of works £ _____ per hour

Technician £ _____ per hour

Others £ _____ per hour

(ii) Mechanical and electrical clerks of works

a. Director/senior clerk of works (clause 3.5a): £ _____ per hour

b. Clerk of works (clause 3.5c):

Clerk of works £ _____ per hour

Technician £ _____ per hour

Others £ _____ per hour

(Note: every category of the above as entered by the client, is to be completed by the clerk of works)

Travelling, subsistence and other expenses

6.7 Travelling, subsistence and other expenses required to carry out the duties as set out in schedule 1 of the memorandum of agreement shall be included in the lump sum fees in accordance with clause 3.8, except where excluded by 3.10.

Accounts and interim payments

6.8 The intervals at which accounts shall be submitted and interim payments made in accordance with clause 3.21 shall be monthly/ quarterly/stage payments (client to delete as appropriate: if no deletion, "monthly" shall apply) reckoned from the commencement of the clerk of works' appointment.

Adjudicator

6.9 The person named as adjudicator under the provisions of clause 2.38 shall be: _____

(where no person is nominated as adjudicator at the commencement of this agreement a person shall be nominated by the Institute of Chartered Arbitrators).

Special conditions

6.10 Insert any conditions other than those in parts 2 and 3 of this agreement which are to apply to the appointment.

Conditions not to apply

6.11 Insert any clauses in parts 2 and 3 of this agreement which are not to apply to this appointment.

Schedule 1 of the memorandum of agreement

This schedule describes the PLAN OF WORK which contains details of key events and duties to be completed by the clerk of works. The duties listed herein must be carried out in compliance with the client's procedures for the execution of capital works, current at the date of this AGREEMENT.

The duties set out in this schedule, shall constitute the CLERK OF WORKS for the purposes of payments under article 6.5 for the memorandum of agreement except insofar as they arise in consequence of pre-contract and post-contract changes referred to in clauses 3.16 and 3.17.

In this agreement the following expressions shall have the meanings hereby ascribed to them:

S1 Lead consultant

The consultant nominated in accordance with clause 1.7 and identified in clause 6.3 of the articles of agreement. The duties of the lead consultant are described in clause S1 of the Agreement for the appointment of architects, surveyors and engineers for commissions in the NHS (1995 edition).

S2 Contract administrator

The consultant nominated in accordance with the provisions of clause 1.10 of the scheme particulars and clause 6.4 of the memorandum of agreement. The duties of the lead consultant are described in clause S1 of the Agreement for the appointment of architects, surveyors and engineers for commissions in the NHS (1995 edition).

S3 Project director

The role of the project director is defined in the Capital Investment Manual – Project Organisation.

Plan of work – building/mechanical/engineering clerk of works

Work Stage 4:	**Construction and equipment supply**
Client briefing:	Receive client brief which will include details of: a. hours of working and overtime recording; b. procedures for submitting daily labour returns; c. procedures for recording delays on site; d. procedures for recording and certifying day works; e. procedures in respect of material samples; f. testing of materials and workmanship; g. BSS certificates for materials; h. storage of materials; j. procedures for notifying work to be covered up; k. general inspection procedures; m. procedures for the issue of clerk of works' directions; n. procedures for responding to contractors' queries; p. duties and relationships of the members of the design and contract administration team.
Communications:	Establish lines of communication between the members of the design team and contract administration team and others.
Contract documents:	Examine drawings and specifications and/or bills of quantities and: a. submit any queries to the client for consideration; b. notify the client of any differences between the drawings and the specifications and bills of quantities.
Standards:	Establish quality standards for workmanship and materials.
Site conditions:	Visit the site and record the following: a. any differences between the conditions and features as found on-site and those recorded in the contract documents;

b. any difficulties in respect of access to the site;

c. the possible effects of work on adjoining and/or adjacent properties on the site.

Datum points: Confirm with the client:

a. the benchmarks to be used;

b. the building line;

c. any other setting out points.

Inspection: Inspect the following for compliance with the contract documents and report any non-compliance with the client:

a. setting out and levels;

b. all materials delivered to the site for incorporation into the works;

c. all building/mechanical/electrical work in progress;

d. when instructed by the client, the premises of the contractor, sub-contractor and supplies where components are being manufactured off-site and the components on delivery to the site.

Records: Establish and maintain records in respect of:

a. daily/weekly (client to delete alternative not required) site diary;

b. weather and working conditions;

c. site labour state;

d. all delays on site, for example weather, industrial action, disruption resulting from changes;

e. progress reports as required;

f. progress of works against construction programme;

g. progress of public utilities (gas, water, telephone, electricity etc);

h. drawings receipt register;

j. clerk of works' directions;

k. costs made and associated results;

m. inspection carried out on sections of the works;

n. differences between drawings provided and work as-built;

p. work liable for claim as dayworks or other extra;

q. work liable to be covered requiring checking/ measurement;

r. any other information required by the client (this could include photographs – details of requirements must be provided by the client and specified under "other duties").

Site facilities:	Liaise with contractor in respect of the provision of site accommodation, compound, stores etc in accordance with the contract documents.
Site levels/boundary:	Liaise with contractor in respect of: a. identifying benchmarks, building line and other setting out points; b. verify transferred benchmarks; c. inspecting the taking and giving of levels of the site prior to the commencement of any work and record on site plan or obtain contractors' agreement that levels/boundaries are as included in the contract documents – notify client of any differences.
Dayworks:	Check submitted daywork sheets and approve/reject as appropriate.
Tests:	a. Verify testing requirements with client and ensure that contractor is aware of all requirements. b. Witness all tests required by the client, including retests, report to client.
Clerk of works directives:	Issue clerk of works directives in relation to the building/engineer contracts in close collaboration with the client.
Discrepancies in drawings/ specifications:	Inform the client of discrepancies in documents and drawings when they become apparent.
Health and Safety file:	Provide information to lead consultant for inclusion in Health and Safety file.
Health and Safety plan:	Provide information to contractors for inclusion, implementation and development of Health and Safety plan, comply with requirements of Health and Safety plan.

Work stage 5:	**Technical commissioning and handover**
Commissioning procedure, testing and working demonstration:	Witness all commissioning procedures, testing and working demonstration for compliance with contract documents and report to client.
Record drawings:	Inspect the record drawings provided by the Contractor and ensure that they do not differ from the records made by the clerk of works.
Practical completion and the handover procedure:	The procedures relating to practical completion and handover of the works and which involve clerk of works' duties are as follows:

Stage 1: The contractor and any building and engineering sub-contractors must produce their reports identifying their unsatisfactory or incomplete work. Such work shall be brought forward to a state where the items concerned have been sufficiently reduced to be acceptable for inspection by the building and engineering clerks of works.

Stage 2: On the contractor's request, the building and engineering clerks of works will inspect the work concerned and subsequently complete and issue their schedule of "unsatisfactory or incomplete work".

Stage 3: When the clerk of works and the contractor's site representative are satisfied that virtually all the items on the Stage 2 schedules have been made good, a penultimate inspection will be held. Such an inspection will be the main technical inspection attended by the contractors, the project architect, the project engineer, employer's technical representatives, etc. Should the penultimate inspection convince the project architect and project engineer that the works are acceptable for handover, then it will be followed within a few days by stage 4.

Stage 4: The final handover inspection attended by the contractor, the employer, the project architect, the project services engineer etc. In this connection the contractor's attention is drawn to the following:

(a) If the preceding stages have been effectively executed, this stage should only entail the clearance of a minimal number of items followed by the final cleaning.

The inspection itself should thus be reduced to a rapid walk over the work concerned and the handover of the labelled keys (that is, a very much shorter process than the penultimate inspection).

(b) The key to the effective execution of the preceding stages lies in "stage 1" and the contractor should appreciate (and if necessary impress on the various sub-contractors) that the clerk of works will not be allowed to continue the preparation of their written schedules of "unsatisfactory or incomplete work" if it is considered that the initial room lists are too long.

(c) It is of course in the interest of all the contracting parties to avoid the lengthy process of producing overlong schedules of "unsatisfactory or incomplete work" with its associated costly repetition of inspections, cleaning etc and attendant delays.

Stage 5: Within a reasonable period of time before the expiry of the relevant defects liability period, the project architect/project services engineer, together with the employer's technical representative (if the latter so wishes), will carry out a detailed inspection of the work to establish the nature and extent of the faults requiring attention under the terms of the contract. Subsequently, a meeting (attended by contractor, project architect, project services engineer, clerk of works and employer's technical representatives) will be held to finalise the schedule of defects. The contractor will then be required to execute the necessary work in accordance with the terms of the contract. The project architect/project services engineer will inspect the work upon its completion and if, in the opinion of the project architect (or his representative), it has been satisfactorily completed, a certificate of making good defects will be issued.

Construction certificate:	Provide construction certificate to client/lead consultant.
Health and Safety file:	Provide information to lead consultant for inclusion in Health and Safety file.
Health and Safety plan:	Provide information to contractor(s) for inclusion, implementation and development of Health and Safety plan, comply with requirements of Health and Safety plan.

Work stage 6:	**Post-completion**
Defects liability period:	Inspect work carried out by contractor when rectifying defects for compliance with contract document, report to client.

Plan of work – building/mechanical/engineering clerk of works

Other duties

The provision of the following duties shall be separately agreed with the clerk of works either prior to inclusion within this AGREEMENT, or at a time when they can be more clearly identified; the duties listed do not relate to any particular work stage.

_____

COW/1 _____

COW/2 _____

COW/3 _____

COW/4 _____

COW/5 _____

COW/6 _____

COW/7 _____

COW/8 _____

COW/9 _____

COW/10 _____

Date _____

A AS WITNESS the hands of the parties the day and year first above written

Signed _____
(Client)

Witness to the Signature of the Client

_____

Name: _____

Address: _____

_____

_____

Description

_____

Signed _____
(Clerk of Works)

Witness to the Signature of the Clerk of Works

_____

Name: _____

Address: _____

_____

_____

Description

_____

OR

B EXECUTED AS A DEED by the Client
hereinbefore mentioned namely _____

_____ (NHS body)

by affixing its common seal
in the presence of:

(Authorised Official) _____

For execution as a deed by an individual or partner

*i EXECUTED AS A DEED by the Clerk of Works hereinbefore mentioned namely _____
whose signature is here subscribed

_____ (Consultant)

in the presence of (Witness)

Name: _____

Address: _____

_____

_____

Description

_____

For execution as a deed if the Clerk of Works is a Company using its common seal

*ii EXECUTED AS A DEED by the Clerk of Works hereinbefore mentioned namely _____
whose signature is here subscribed

_____ (Clerk of Works)

by affixing its common
seal in the presence of:

_____ (Authorised Signatory)

For execution as a deed if the Clerk of Works is a Company registered under the Companies Act and it is not using a common seal

*iii EXECUTED AS A DEED by the Clerk of Works hereinbefore mentioned namely _____
whose signature is here subscribed

_____ (Clerk of Works)

acting by a director and its secretary/two directors
whose signatures are here subscribed:

Namely: _____

Signature: _____ (Director)

and: _____ (Secretary/Director)

Signature: _____

* Delete as appropriate

NOTE 1 Use either A (under hand) or B (as a deed); delete alternative not used. If no deletion is made A will apply.

NOTE 2 PARTNERSHIP. If the Clerk of Works' firm is a Partnership the Agreement must be executed by a Partner duly authorised to sign on behalf of the Partnership.

NOTE 3 COMPANY – WITH SEAL
If the Clerk of Works' practice is constituted as a Company and it is affixing its common seal to the Agreement, it must be signed by the officer(s) of the Company who is/are authorised to witness the sealing.

NOTE 4 If the Clerk of Works' practice is constituted as a Company registered under the Companies Act and it is not using a common seal, the Agreement must be signed either by a director and the company secretary or by two directors.

Other publications in this series

Given below are details of other documents in the Concode series which are either published by The Stationery Office or in preparation. Information is correct at the time of publication of this document.

Contracts and commissions for the NHS estate: Policy, 1993

Agreement for the appointment of project managers for commissions for construction projects in the National Health Service, 1995

Guide to the Agreement for the appointment of architects, surveyors and engineers for commissions in the National Health Service, 1995

Guide to the Agreement for the appointment of project managers for commissions for construction projects in the National Health Service, 1995

Agreement for the appointment of architects, surveyors and engineers for commissions in the NHS.

> Vol 1: Scheme particulars, memorandum of agreement, conditions of appointment, provision for fees and expenses, specimen certificates, definitions, 1995
>
> Vol 2: Supplementary annexure, 1995
>
> Vol 3: Duties under the Construction (Design and Management) Regulations 1994, 1996

Contracts and commissions for the NHS estate: Contract procedures, 1994

Guide to procedures for commissioning building and engineering consultants, 1994

Guide to the requirements of European Community public procurement directives, 1995

Guide to contract strategies for construction projects in the NHS, 1995

Guide to the JCT Standard Form of Building Contract, 1980 Edition, Local Authorities (as amended), 1995

Guide to the JCT Standard Form of Building Contract With Contractor's Design 1981 Edition (as amended), 1996

Agreement for the appointment of architects, surveyors and engineers for commissions for minor works in the NHS, 1996

Guide to the JCT Agreement for minor building works, 1994 (new edition in preparation)

Guide to the JCT Intermediate Form of Building Contract for works of simple content 1984 Edition (as amended), 1996

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NHS Estates, Department of Health, 1 Trevelyan Square, Boar Lane, Leeds LS1 6AE.

NHS Estates is a non-profit-making Executive Agency of the Department of Health.

The price of this publication has been set to make some contribution to the costs incurred by NHS Estates in its production.

About NHS Estates

NHS Estates is an Executive Agency of the Department of Health and is involved with all aspects of health estate management, development and maintenance. The Agency has a dynamic fund of knowledge which it has acquired during over 30 years of working in the field. Using this knowledge NHS Estates has developed products which are unique in range and depth. These are described below. NHS Estates also makes its experience available to the field through its consultancy services.

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Concode – outlines proven methods of selecting contracts and commissioning consultants. Reflects official policy on contract procedures. *SO*

Works Information Management System – a computerised information system for estate management tasks, enabling tangible assets to be put into the context of servicing requirements. *NHS Estates*

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